

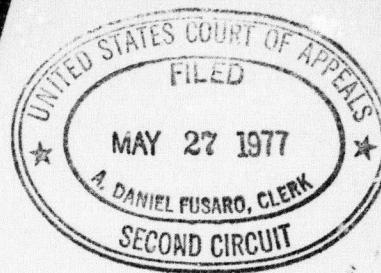
*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
BRIEF &  
APPENDIX**



76-7629



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- X

LUIS E. GARCIA,  
Plaintiff-Appellant

v.

THE CITY OF NEW YORK, PAUL HELD &  
LOCAL 420,

Defendants-Appellees

UNITED STATES DISTRICT  
COURT  
SOUTHERN DISTRICT OF  
NEW YORK

CASE No 75 Civ 3787  
JUDGE W. CONNER

----- X

CIVIL APPEAL #1  
Docket No. 76-7629

BRIEF FOR ~~AND APPENDIX~~  
APPELLANT (PLAINTIFF)

FILED - PRO SE

LUIS E. GARCIA

**PAGINATION AS IN ORIGINAL COPY**

S T A T E M E N T   O F   F A C T S

Plaintiff brought these claims against defendants alleging (1) An assault which occurred on May 29, 1974 (2) harrassment and discriminatory treatment in violation of his civil rights and of various Federal Labor Statutes, in paricular Section 301 of the Labor Management Relations Act of 1947 ( 29 U.S.C. # 185) and Section 102 of the Labor Management Reporting and Disclosure Act of 1959 ( 29 U.S.C. # 412, etc.).

Plaintiff alleged that the defendants conspired to commit unfair labor practices against the plaintiff and in violation of his federally protected Civil Rights as well as his contracted rights under a collective bargaining agreement.

The claims were decided upon by the Federal District Court on November 26, 1976. The claims against the City of New York and Paul Held were dismissed because of procedural errors by the plaintiff's errors. The claim against Local 420 was ordered dismissed because of an alleged settlement betwen plaintiff and Local 420.

MR. GARCIA, THE PLAINTIFF, AT NO TIME AGREED TO SETTLE WITH LOCAL 420, NOR DID HE EVER SIGN A SETTLEMENT AGREEMENT.

POINT I - THE FEDERAL DISTRICT COURT ERRED IN DISMISSING THE CLAIM AGAINST THE UNION BECAUSE OF SETTLEMENT, THEREFORE DENYING PLAINTIFF AN OPPORTUNITY TO PRESENT HIS CASE, AND DENYING PLAINTIFFS BASIC DUE PROCESS RIGHTS.

The law is clear that there can be no settlement unless both parties agree. A settlement that one party is unaware of is clearly an illegal settlement.

Plaintiff's Fifth Amendment Rights include right to property - and right to a fair and full procedure - when question of property and basic civil rights are in question. In this case the Court has found a settlement to be valid, legal and binding without the agreement of the Plaintiff the Court has denied plaintiff his basic due process rights.

C O N C L U S I O N

Since Plaintiff never agreed to a settlement - and therefore was denied his right to a hearing, Plaintiff request that his claim against the union be restored - and that a hearing be held on his claim.

Respectfully

*Luis E. Garcia*  
Luis E. Garcia

Pro se

*Paul Garcia* (17)  
*Conner,*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

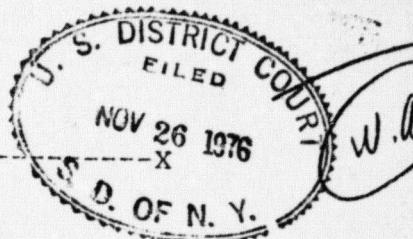
LUIS GARCIA,

Plaintiff,

-against-

THE CITY OF NEW YORK, PAUL HELD  
and LOCAL 420,

Defendants.



75 Civ. 3787  
(WCC)

ORDER

*Judgment*

X

A Trial Memorandum having been submitted by  
W. BENJAMIN RICHLAND, Corporation Counsel, RICHARD A.  
DUSCHANECK, of Counsel, appearing on behalf of the defendants,  
THE CITY OF NEW YORK and PAUL HELD, and upon request, said  
Trial Memorandum was accepted by this Court as a motion to  
dismiss the complaint against said defendants at a conference  
*at which plaintiff's counsel indicated no opposition to such*  
held on November 22, 1976 and attended by all counsel, it *noting*  
is hereby

*me*

MICROFILM  
NOV 2 1976

ORDERED, that the First Cause of Action be  
dismissed against the defendant, THE CITY OF NEW YORK,  
which defendant is not a proper party to this action and  
against the defendant, PAUL HELD, inasmuch as said claim  
is barred by Statute of Limitations, and that the Second  
Cause of Action be dismissed against said defendants as  
this Court lacks subject matter jurisdiction over said  
claim, and it is further

ORDERED, that the claim against LOCAL 420  
having been settled between said Local and the plaintiff in  
the amount of \$104.25, which represents the total amount  
of dues paid <sup>to said</sup> Local, and said settlement having been approved

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by this Court, that the complaint against Local 420 be dismissed, and it is further

ORDERED, that judgment in accordance with the above be entered without interest, costs or disbursements.

Dated: New York, N.Y.  
November 23, 1976

William C. Conner  
WILLIAM C. CONNER  
U. S. D. J. *2nd fl.*

JUD

-11/26/76

Raymond F. Burghardt  
CLERK

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

*Richard A. D. ...* being duly sworn, says that on the 23rd day  
of November, 1978, he served the annexed Subpoena Order upon  
Julia T. ... Esq., the attorney for the Defendant in the Case 1-1978,

herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 110 Park Place in the Borough of Manhattan, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

23rd day of November, 1978  
*CMHoulahan*  
 CHRISTOPHER M. HOULIHAN  
 Notary Public, State of New York  
 No. 461190  
 County of New York, State of New York  
 1978

Form 323-30M-701127(70)

73rd day of November, 1978  
*CMHoulahan*  
 CHRISTOPHER M. HOULIHAN  
 Notary Public, State of New York  
 No. 461190  
 County of Westchester, State of New York  
 Commission Expires April 30, 1978

Form 323-30M-701127(70)

To appeal: Submit an original and one copy for the court, and one copy for ~~each~~<sup>myself</sup> each defendant's attorney. List the attorney's names and addressed under the word "Notice" on bottom left.

If you are paying the \$5 fee, take this to Orders and Appeals, G 66.

If you wish to file as an indigent, ask for and complete the affidavit of indigency form required by the Court of Appeals.

(14)

5.00 per

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LUIS GARCIA

PLAINTIFF

AGAINST  
THE CITY OF NEW YORK  
PAUL HELD, AND LOCAL 420

DEFENDANTS

75 Cr. 3787

Docket Number:

Judge: WILLIAM CONNER

DEC 15 1976 FILED  
U.S. DISTRICT COURT  
S.D. OF N.Y.  
W.H.T.

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that Luis E. Garcia,  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the decision and order  
of U.S.D.C. - S.D.N.Y. (Conner, J.) dismissing his  
complaint or petition (cross out one) on NOVEMBER  
23<sup>rd</sup>. (date), 1976.

Notice To:

The CITY OF NEW YORK,  
PAUL HELD  
AND LOCAL 420

Signed Luis E. Garcia

Address 256 Kaplan Ave  
HACKENSACK, N.J. 07601

Telephone 201-342-5973

NOTICE: W. Bernard Richland, Esq.  
Corporation Counsel  
CITY OF NEW YORK  
MUNICIPAL BUILDING  
New York, N.Y. 10007

NOTICE: WILLIAM H. FRAPPOLLO, ATTORNEY  
LOCAL 420  
140 PARK PLACE  
NEW YORK, N.Y. 10007

18.

CIVIL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE CONNER

75 CIV. 37

Jury demand date:

D. O. Form No. 106 Rev.

208-1	75 3787	TITLE OF CASE 08 05 75 4 320 1 41	ATTORNEYS 1,000 P 0861 G.V.
For plaintiff:			

GARCIA, LUIS

Gena Greacanzi  
415 Lexington Avenue

VS.

THE CITY OF NEW YORK and

HELD, PAUL and

LOCAL 420.

12/15

For defendant:

W. Bernard Richland, Corporation  
Municipal Bldg. New York, NY 100  
(for deft The City of N.Y.) and

JULIUS TOPOL  
110 Park Place-NYC 10007 ( 766-1043 )  
( for deft. Local 420 )

JUDGE CONNER

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC
J.S. 5 mailed X	Clerk	AUG 1975	55-729	620
J.S. 6 mailed ✓	Marshal			50
Basis of Action: PERSONAL INJURIES U.S.CIVIL STATUTE is TITLE 28 USC 1332.	Docket fee Witness fees			
Action arose at:	Depositions			



75 CV. 37

DATE	PROCEEDINGS	DEPT ORD JUDGMENT
8-01-75	(1) Filed complaint and issued summons.	
8-02-75	(2) Filed stip & order that the time for deft. Local 420 to answer to the complaint is extended to 09-17-75. So ordered- CONNER, J.	
09-12-75	(3) Filed summons and return - served the following: Local 420 by P. Brooks on 08-07-75 Paul Held by T. Perkins on 09-09-75. The City of New York by Louise Munsterman on 08-14-75.	
19-26-75	(4) Filed ANSWER of deft The City of New York to the complaint.	(WB)
09-29-75	(5) Filed stip & order that the time for deft. The City of New York to answer to the complaint is extended from 09-03-75 to 11-02-75. So ordered- CONNER, J.	
0-09-75	(6) Filed stip & order extending the time for deft. Local 420 to answer to the complaint to 10-03-75. So ordered- CONNER, J.	
10-17-75	(7) Filed Amended complaint	
10-24-75	(8) Filed pltff's affdvt. and Order to Show Cause for a preliminary injunction. Pet. 10-30-75. CONNER, J.	
0-29-75	(9) Filed Defts The City of New York and Paul Held's Affidavit in opposition to the pltff's application for a preliminary injunction, by Jack Cherrill.	
11-05-75	(10) Filed ANSWER of deft. Paul Held to the amended complaint & demand jury trial	(WB)
11-20-75	(11) Filed ANSWER of deft. Local 420 to the amended complaint	
11-21-75	(12) Filed stip & order extending the time of deft. Local 420 to answer, etc. to the complaint to 11-20-75. So ordered- CONNER, J.	(J.V.)
12-04-75	(13) Filed deft. Local 420 notice of taking deposition of pltff. on 12-04-75.	
05-21-76	-- PRE-TRIAL CONFERENCE HELD BY CONNER, J.	
0-29-76	-- PRE-TRIAL CONFERENCE HELD BY CONNER, J.	
11-16-76	(14) Filed Statement of Agreed Facts	
11-22-76	(15) Filed pltff's request to charge.	
11-22-76	(16) Filed pltff's pre-trial memorandum.	
11-26-76	(17) Filed Order & Judgment-- that the first cause of action be dismissed against the deft. The City of New York, etc, and against the deft., Paul Held, etc. and that the second cause of action be dismissed against said defts. etc. and that the claim against Local 420 having been settled in the amount of \$104.25 etc. that the complaint against Local 420 be dismissed and that judgment be entered without interest, costs or disbursements. CONNER, J.	
	Judgment entered 11-26-76 Clerk (m/n)	
12-15-76	(18) Filed pltff's Notice of Appeal to USCA 2nd Circuit from decision and order of Conner, J. copies mailed to W.Bernard Richland, Esq. Corporation Counsel, City of NY Municipal Bldg. NYC 10007 and William H.Frappolo, Esq. (Local 420) 140 Park Place, NYC 10007.	

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

BY *[Signature]* Deputy Clerk

P

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LUIS E. GARCIA  
PLAINTIFF  
- AGAINST -  
THE CITY OF NEW YORK,  
PAUL HELD, AND LOCAL 420,  
DEFENDANTS

CASE NO. 75 CIV 3787

JUDGE W. COOPER

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- B, and the original filed papers numbered 1 thru 19, and exhibits \_\_\_\_\_, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

No. 6



IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 11/77 day of JANUARY, in the year of our Lord, One thousand nine hundred and seventy SEVEN, and of the Independence of the United States the 201<sup>st</sup> year.

Raymond F. Burghardt  
Clerk of the Court

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Luis E. Garcia.

PLAINTIFF

- AGAINST -

THE CITY OF NEW YORK  
PAUL HELD, AND LOCAL 420,

DEFENDANTS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF  
NEW YORK

CASE NO. 75 CIV. 3787

JUDGE W. CONNER

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NO-7629

